

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

MICHAEL DAVID STUNTZ,	§	
INDIVIDUALLY AND ON BEHALF	§	
OF ALL THOSE SIMILARLY	§	
SITUATED	§	
	§	
Plaintiffs	§	
VS	§	C.A. No. 1:14-CV-000173
	§	(RC)
ASHLAND ELASTOMERS, LLC;	§	
ET AL	§	
	§	
Defendants	§	COLLECTIVE ACTION

**PLAINTIFFS' MOTION TO WITHDRAW, ALTERNATIVELY TO SEAL  
DOCUMENT 190**

TO THE HONORABLE CHIEF UNITED STATES DISTRICT JUDGE RON CLARK:

COMES NOW PLAINTIFFS and file this Motion to Withdraw, Alternatively to Seal Document 190, and in support thereof offers the following:

**I.**

1. On October 11, 2017 the undersigned filed Document 190 titled "Plaintiffs' Motion for Leave to Supplement Plaintiffs' Motion for Summary Judgment [Doc. #146], and Responses to Defendants' Motions for Partial Summary Judgment on Donning Doffing Claims [Doc. #142, 170]" The Motion seeks leave to supplement Plaintiffs' summary judgment filings with records produced by Defendant Ashland Elastomers LLC in response to Plaintiffs' Third Request for Production.

2. Since the filing of the motion, the undersigned has received notice from Ashland's counsel that Exhibits B, E & G were inadvertently produced, and

requesting , (a) withdraw of the motion, and (b) return of Exhibits B, E, & G with deletion of any copies pursuant to FRE 502 on the grounds same are protected by the work product and attorney client privilege. Plaintiffs take the position that the asserted objections were waived and information in the documents is discoverable and relevant to the issues before the Court. Defendant Ashland takes the position that the documents were inadvertently disclosed and any and all privileges were not waived, and the documents are not discoverable or admissible for any purpose and should be returned to defense counsel. Thus the parties have a disagreement on whether the documents may be considered by the Court.

3. Based on the above circumstances, pending a ruling from the Court on whether the documents are prohibited from being part of the record based on the work product and attorney client privilege, Plaintiff is requesting an Order either withdrawing or sealing Document 190 and the related exhibits.

### **PRAYER**

Wherefore, the parties move the Court for an Order either Withdrawing or Sealing Document 190 pending a ruling from the Court on the status of the documents at issue.

Respectfully Submitted,

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By: /s/ Mark Frasher

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**Attorneys for Plaintiffs**

**CERTIFICATE OF CONFERENCE**

The undersigned has been in communication with defense counsel, Jason Hilliard, who is neither opposed nor in agreement with the language of the motion, but is in agreement with the requested relief to withdraw Document #190.

/s/ Mark Frasher

Mark Frasher

**CERTIFICATE OF SERVICE**

This is to certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this instrument via the USDC Eastern District's CM/ECF system on October 13<sup>th</sup>, 2017.

/s/ Mark Frasher

Mark Frasher